IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PIROS SIGNS, INC.,	)	
	)	**Case No.**
Plaintiff,	)	**Div.**
	)	
vs.	)	
	)	
JOHN KARSCH,	)	
	)	
Serve at: 1730 Old State Rd. M	)	
Barnhart, MO 63012	)	
	)	
Defendant.	)	

PETITION FOR COPYRIGHT INFRINGEMENT,
BREACH OF CONTRACT, AND UNJUST ENRICHMENT

Plaintiff Piros Signs, Inc. ("Piros"), by and through undersigned counsel, hereby states as follows for its Petition for Copyright Infringement, Breach of Contract, and Unjust Enrichment against Defendant John Karsch ("Karsch"):

Parties, Jurisdiction, and Venue

1. Piros is a Missouri corporation, in good standing, and maintaining a principal place of business and registered agent in Jefferson County, Missouri.

2. Karsch is a Missouri citizen, conducting business under the fictitious entity trade name Karsch's Village Market, and may be found in Jefferson County, Missouri.

3. This Court has original jurisdiction over Piros' copyright infringement claim, 15 U.S.C. §501, pursuant to 28 U.S.C. §1338(a) and supplemental jurisdiction over Piros' breach of contract and unjust enrichment claims against Karsch pursuant to 28 U.S.C. §1367(a) as those claims arose out of and relate to Piros and Karsch's business relationship giving rise to the copyright infringement cause of action.

4. Venue is proper in and before this Court pursuant to 28 U.S.C. §1400(a) as this Petition alleges a claim for copyright infringement and Karsch may be found in this district.

Allegations Common to All Counts

5. Piros is the owner of certain real property located 1818 Old State Road M Barnhart, MO 63012 (the "Piros Property").

6. Karsch is the owner and/or operator of certain real property located at 1730 Old State Road M Barnhart, MO 63012 (the "Karsch Property"), immediately west of and adjacent to the Piros Property. *See* Exhibit A, Map of Piros Property and Karsch Property.

7. In order to obtain sufficient real property to construct a market, Karsch contacted neighboring property owner, Piros, in 2009 and proposed a property swap wherein, amongst other material agreements, Karsch would purchase and then provide Piros certain real property immediately west of the Piros Property in exchange for Piros conveying part of its existing real property to Karsch.

8. The Parties executed a *Contract for the Exchange of Real Estate* on May 13, 2009 (the "Contract"), a copy of which is attached hereto as Exhibit B.

9. Pursuant to §1.1 of the Contract, Karsch agreed fill the parcel to be conveyed to Piros to grade level no less than one (1) foot above flood plain with base rock and finish coat of one inch minus or one inch clean rock fill or a minimum of 428 feet. *See* Exhibit B.

10. Pursuant to §1.2 of the Contract, Karsch agreed to construct an eight (8) foot privacy fence on the west, south, and east sides of the newly configured Piros tract with three (3) sets of gates, including closing in the north end of the property to be conveyed to Piros to tie in with the existing property fence. *See* Exhibit B.

11. Pursuant to §1.3 of the Contract, Karsch agreed to contract with Piros for exterior signage, lighting and maintenance on the grocery store site if Karsch is successful in constructing a grocery store on property lying east of the Piros Property. *See* Exhibit B.

12. Karsch additionally represented to and covenanted and agreed with Piros that the Contract, performance thereof, and whole transaction would cost Piros zero out-of-pocket expense.

13. Following execution of the Contract, Piros fully performed the Contract and the Parties' agreements, including, but not limited to, conveying a portion of the Piros Property to Karsch so that he could construct a market on the Karsch Property.

14. Karsch constructed a market on the Karsch Property and, pursuant to the Contract, contracted Piros for the design and installation of signage and lighting.

15. Piros deigned and created several works (signs) for limited, permitted use by Karsch and the specific market on the Karsch Property.

16. Piros registered its works with the Copyright Office pursuant to 17 U.S.C. §409. *See* Exhibit C, Piros' Copyright Registration.

17. The works designed and created by Piros were then used by Karsch in and on the market constructed by Karsch at the Karsch Property. *See* Exhibit D, Karsch Property Pictures.

18. Despite Piros' full performance of the Contract, Karsch failed and/or refused to perform his obligations to and covenants and agreements with Piros.

19. Specifically, Karsch failed to perform §1.1 and §1.2 of the Contract by failing to use both base and clean rock fill to grade level on Piros' Property and constructing a perimeter fence around the Piros Property.

20. Karsch's breaches of its obligations did not become known to Piros until sometime after closing on the Contract as the Parties negotiations over the fill and location of the subject fence extended well beyond the initial property swap and construction of the market.

21. In fact, Karsch was still negotiating with Jefferson County over matters relating to Piros' perimeter fence and the County's request to Karsch to install shrubberies and trees on the Piros Property through late 2013.

22. Notwithstanding such negotiations, upon information and belief, Karsch purchased and continues to hold all of the materials necessary to construct Piros' perimeter fence.

23. Karsch's breaches of its representations, covenants, and agreements have damaged Piros in that Piros had to incur out-of-pocket expenses to install the rock Karsch failed to install on the Piros Property and Piros is without a perimeter fence, causing security and privacy concerns.

24. In 2016, Karsch began constructing a second market, also under the Karsch Village Market trade name, at or about 10724 Business 21 in Hillsboro, Missouri ("Second Store").

25. In constructing the Second Store, Karsch utilized all or substantially all of the designs and works created by Piros for the market at the Karsch Property. *See* Exhibit E, Second Store Pictures.

26. At no time was Karsch licensed and/or permitted by Piros to use the works and designs described in Exhibit C for the Second Store.

Count I – Copyright Infringement

27. Piros restates each and every allegation set forth in paragraphs 1 through 26 of this Petition as if more fully restated herein.

28. Piros is the owner of a valid copyright for the works described in Exhibit C.

29. Piros' works were/are original, originally authored by Piros, independently created by Piros, and possess sufficient creativity for copyright registration and protection.

30. Piros further complied with all statutory formalities to obtain copyright protection of its works and received a copyright registration from the U.S. Copyright Office.

31. Karsch had access to Piros' copyrighted materials by virtue of Piros design and installation of the same on the Karsch Property, prior to construction of the Second Store.

32. Karsch engaged in factual copying of Piros' copyrighted works when it constructed the Second Store, and specifically, the signage thereon which, when compared as a whole to Piros' copyrighted works, are strikingly similar and/or adequately similar to establish appropriation.

33. At no point was Karsch licensed or permitted by Piros to use Piros' copyrighted works on or in conjunction with the construction of the Second Store.

34. Karsch's unauthorized use of Piros copyrighted works has damaged Piros, including, but not limited to, by virtue of lost profits.

WHEREFORE, Piros Signs, Inc. respectfully prays this Honorable Court enter a Judgment against John Karsch:

(a) Restraining and enjoining Karsch, per 17 U.S.C. §502, from utilizing Piros' copyrighted works on or in conjunction with the operation of the Second Store;

(b) Impounding the infringing signage per 17 U.S.C. §503;

(c) For actual damages suffered by Piros per 17 U.S.C. §504(b);

(d) For statutory damages per §17 U.S.C. §504(c);

(e) For Piros' attorney's fees and costs per 17 U.S.C. §505; and

(f) Such other and further relief as this Court deems just and proper.

Count II – Breach of Contract

35. Piros restates each and every allegations set forth in paragraphs 1 through 34 of this Petition as if more fully restated herein.

36. Piros and Karsch entered into several agreements, partially memorialized by the Contract, which included, in relevant part, Karsch's agreements and covenants that:

a. Karsch would fill the parcel to be conveyed to Piros to grade level no less than one (1) foot above flood plain with base rock and finish coat of one inch minus or one inch clean rock fill or a minimum of 428 feet;

b. Karsch would construct an eight (8) foot privacy fence on the west, south, and east sides of the newly configured Piros tract with three (3) sets of gates, including closing in the north end of the property to be conveyed to Piros to tie in with the existing property fence; and

c. That the whole transaction proposed by Karsch to Piros would cost Piros zero out-of-pocket expense.

37. Karsch failed to perform and breached his representations, covenants, and agreements with Piros, directly and proximately damaging Piros, namely by virtue of Karsch's failure to install the rock above and construct a perimeter fence around the Piros Property.

38. Meanwhile Piros fully performed its obligations under the Parties' agreements.

WHEREFORE, Piros Signs, Inc. respectfully prays this Honorable Court enter a Judgment against John Karsch:

(a) For actual damages suffered by Piros in an amount to be more fully determined at trial;

(b) For Piros' costs; and

(c) Such other and further relief as this Court deems just and proper.

Count III – Unjust Enrichment

39. Piros restates each and every allegations set forth in paragraphs 1 through 38 of this Petition as if more fully restated herein.

40. At Karsch's special insistence and request Piros conveyed real property to Karsch in response to Karsch's representations that it would install base and clean rock fill on the Piros Property, construct an eight foot fence to enclose the Piros Property, and ensure Piros suffered no out-of-pocket expense associated with Karsch's request and property swap proposal.

41. But for Karsch's special insistence and request, Piros would not have conveyed the subject real property to Karsch.

42. Despite Piros furnishing of the subject real property and benefit to Karsch, Karsch failed to compensate Piros for that benefit by installing the rock and fence above and ensuring Piros suffered no out-of-pocket expense associated with the transaction.

43. It would be unjust to permit Karsch to retain the benefit vested upon Karsch by Piros without just and reasonable compensation to Piros.

WHEREFORE, Piros Signs, Inc. respectfully prays this Honorable Court enter a Judgment against John Karsch:

(a) For actual damages suffered by Piros in an amount to be more fully determined at trial;

(b) For Piros' costs; and

(c) Such other and further relief as this Court deems just and proper.

DANNA MCKITRICK, P.C.

BY: /s/ David A Zobel

David A. Zobel, #64266MO
7701 Forsyth Blvd., Suite 800
St. Louis, MO 63105-3907
(314) 726-1000/(314) 725-6592 fax
E-Mail: dzobel@dmfirm.com
ATTORNEYS FOR PLAINTIFF